

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 CHARLES NEWTON,
9 Plaintiff,
10 v.
11 ANDREW WINTERSTEEN et al.,
12 Defendants.
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2:16-cv-01705-RFB-PAL

ORDER

14 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state
15 prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 8).
16 Based on the financial information provided, the Court finds that Plaintiff is unable to prepay
17 the full filing fee in this matter.

18 The Court entered a screening order on February 28, 2017. (ECF No. 10). The
19 screening order imposed a 90-day stay and the Court entered a subsequent order in which the
20 parties were assigned to mediation by a court-appointed mediator. (ECF No. 10, 13). The
21 Office of the Attorney General has filed a status report indicating that settlement has not been
22 reached and informing the Court of its intent to proceed with this action. (ECF No. 24).

23 Plaintiff also has filed two motions for appointment of counsel (ECF No. 9, 26), a motion
24 to deny Defendants' motion to dismiss if one is forthcoming (ECF No. 18), a motion for leave
25 to file an amended complaint (ECF No. 21), and a motion to demand jury trial (ECF No. 25).
26 Defendants have filed a motion to strike Plaintiff's affidavit (ECF No. 17) and a motion to strike
27 Plaintiff's motion to deny Defendants' motion to dismiss if one is forthcoming (ECF No. 23).

28 The Court strikes all of the motions except for Plaintiff's initial motion for appointment
of counsel as being filed in violation of the 90-day stay which explicitly stated that "no other

1 pleadings or papers shall be filed in this case" during the stay. (ECF No. 10 at 5). A decision
2 on Plaintiff's initial motion for appointment of counsel (ECF No. 9) is still deferred. (ECF No.
3 10 at 5). Additionally, if Plaintiff seeks to file an amended complaint, Plaintiff's amended
4 complaint must contain all claims, defendants, and factual allegations that Plaintiff wishes to
5 pursue in this lawsuit. The Court will not piece meal Plaintiff's claims together. Plaintiff must
6 also file the amended complaint on this Court's approved prisoner civil rights form and it must
7 be entitled "First Amended Complaint."

8 For the foregoing reasons, IT IS ORDERED that:

9 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 8) is GRANTED.
10 Plaintiff shall not be required to pay an initial installment of the filing fee. In the event that this
11 action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

12 2. The movant herein is permitted to maintain this action to conclusion without the
13 necessity of prepayment of any additional fees or costs or the giving of security therefor. This
14 order granting leave to proceed *in forma pauperis* shall not extend to the issuance and/or
15 service of subpoenas at government expense.

16 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections shall
17 pay to the Clerk of the United States District Court, District of Nevada, 20% of the preceding
18 month's deposits to Plaintiff's account (**Charles Newton, #1063241**), in the months that the
19 account exceeds \$10.00, until the full \$350.00 filing fee has been paid for this action. The
20 Clerk of the Court shall **SEND** a copy of this order to the Finance Division of the Clerk's Office.
21 The Clerk of the Court shall also **SEND** a copy of this order to the attention of the Chief of
22 Inmate Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV
23 89702.

24 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and a copy
25 of Plaintiff's complaint (ECF No. 11) on the Office of the Attorney General of the State of
26 Nevada, attention Kat Howe.

27 5. Service must be perfected within ninety (90) days from the date of this order
28 pursuant to Fed. R. Civ. P. 4(m).

1 6. Subject to the findings of the screening order (ECF No. 10), within **twenty-one**
2 **(21) days** of the date of entry of this order, the Attorney General's Office shall file a notice
3 advising the Court and Plaintiff of: (a) the names of the defendants for whom it accepts
4 service; (b) the names of the defendants for whom it does not accept service, and (c) the
5 names of the defendants for whom it is filing the last-known-address information under seal.
6 As to any of the named defendants for whom the Attorney General's Office cannot accept
7 service, the Office shall file, *under seal*, but shall not serve the inmate Plaintiff the last known
8 address(es) of those defendant(s) for whom it has such information. If the last known address
9 of the defendant(s) is a post office box, the Attorney General's Office shall attempt to obtain
10 and provide the last known physical address(es).

11 7. If service cannot be accepted for any of the named defendant(s), Plaintiff shall
12 file a motion identifying the unserved defendant(s), requesting issuance of a summons, and
13 specifying a full name and address for the defendant(s). For the defendant(s) as to which the
14 Attorney General has not provided last-known-address information, Plaintiff shall provide the
15 full name and address for the defendant(s).

16 8. If the Attorney General accepts service of process for any named defendant(s),
17 such defendant(s) shall file and serve an answer or other response to the complaint within
18 **sixty (60) days** from the date of this order.

19 9. Henceforth, Plaintiff shall serve upon defendant(s) or, if an appearance has been
20 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other document
21 submitted for consideration by the Court. Plaintiff shall include with the original document
22 submitted for filing a certificate stating the date that a true and correct copy of the document
23 was mailed or electronically filed to the defendants or counsel for the defendants. If counsel
24 has entered a notice of appearance, Plaintiff shall direct service to the individual attorney
25 named in the notice of appearance, at the physical or electronic address stated therein. The
26 Court may disregard any document received by a district judge or magistrate judge which has
27 not been filed with the Clerk, and any document received by a district judge, magistrate judge,
28 or the Clerk which fails to include a certificate showing proper service.

1 10. The miscellaneous motions (ECF No. 18, 21, 22, 23, 25, 26) filed in violation of
2 the stay are struck from this docket.

3 11. A decision on the motion for appointment of counsel (ECF No. 9) is deferred.

4 12. The Clerk of the Court shall send to Plaintiff the approved form for filing a § 1983
5 complaint, instructions for the same, and a copy of his original complaint (ECF No. 11). If
6 Plaintiff chooses to file an amended complaint, he must use the approved form and he shall
7 write the words "First Amended" above the words "Civil Rights Complaint" in the caption.

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9 DATED: This 31st day of May, 2017.

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United States Magistrate Judge

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